



**THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

Applicants: Gradischnig
Appl. No.: 09/367,580
Conf. No.: 4526
Filed: August 17, 1999
Title: NODE SUPPORTING LINKS HAVING THE ABILITY TO TRANSFER
LONGER MESSAGES THAN ACCORDING TO CURRENT MTP LEVEL 2
Art Unit: 2665
Examiner: Man U Phan
Docket No.: 0112740-055

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

SUPPLEMENTAL APPEAL BRIEF

Sir:

Appellants submit this Supplemental Appeal Brief in response to the Notification of Non-Compliant Appeal Brief pursuant to 37 C.F.R. §41.37. Specifically, the Notice indicate that a statement of the status of the claims and amendments, and that claim 9 was missing from the appealed claims. In light of the presently submitted supplemental Appeal Brief, Applicants have addressed the issues identified in the Notice. Applicants further note that claims 9 and 12 were indicated as containing allowable subject matter, and, as such, are not part of the present Appeal. Furthermore, while amendments were filed subsequent to the Final Rejection, these amendments were not entered by the Examiner, as discussed below. Accordingly, the presently appealed claims appear in the same form as they were prior to the proposed amendments. In the interests of progressing the review of the present application, Applicants have included all the claims for completeness.

I. REAL PARTY IN INTEREST

The real party in interest for the above-identified patent application on appeal is Siemens Aktiengesellschaft, by virtue of an Assignment dated August 17, 1999 and recorded at the United States Patent and Trademark Office at reel 10296, frame 139-141.

II. RELATED APPEALS AND INTERFERENCES

Appellants, Appellant's legal representative and the Assignee of the above-identified patent application do not know of any prior or pending appeals, interferences or judicial proceedings which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision with respect to the above-identified Appeal.

III. STATUS OF CLAIMS

Claims 7-12 are pending in the above-identified patent application. Claims 9 and 12 were objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all the limitations of the base claim and any intervening claims. Accordingly, Claims 7-8 and 10-11 are being appealed in this Brief. A copy of the appealed claims is attached as Appendix A.

IV. STATUS OF AMENDMENTS

A response to the Final Office Action was mailed on February 4, 2005. In the response, claims 7 and 10 were amended pursuant to an Interview that was conducted on February 3, 2005. During the Interview, it was communicated to the Applicant that the Examiner was considering the language in the preamble as functional language, and as a result, was not relied upon for the examination. In response, Applicant reorganized the claim language so the features in the preamble appeared in the body of the claims. Nevertheless, the Examiner refused entry of the amendments in the Advisory Action mailed April 1, 2005, and instead repeated *verbatim* the remarks made in the Final Rejection. A copy of the Final Office Action was previously attached as Appendix "B" and a copy of the Advisory Action was previously attached as Appendix "C." Copies of these documents have not been attached into the present Supplementary Appeal Brief, as they have been accepted in the original submission for Appeal.

V. SUMMARY OF CLAIMED SUBJECT MATTER

The present claims, and particularly independent claims 7 and 10 generally relate to a node in a Message Transfer Part (MTP) network for providing enhanced links. A first destination point code is assigned to the node for connecting to a first link for supporting short messages, wherein the short messages have a message length that is supported by a MTP level 2 signaling link. A second destination point code is also assigned to the node for connecting to a second link for supporting long messages, wherein the long messages have a message length that exceeds a length supported by the MTP level 2 signaling link, and wherein the long messages have a maximum length that is supported by a Service-Specific Connection-Oriented Protocol (SSCOP). Both the first and second destination point codes are part of the same MTP network.

This claimed configuration proposes to use the addressing mechanisms provided in the MTP and the Signaling Connection Control Part (SCCP) to solve interworking problem (see specification pages 4-5). Each node that supports linksets having the ability to transfer longer messages than according to Q.703 (for example SSCOP-linksets), is assigned a second point code (in addition to its narrowband point code), which is referred to as a “broadband point code” to identify its enhanced functions, i.e. those which can generate long messages. An example of such a network is given in figure 2. Routing tables in the MTP are configured so that the broadband signaling points are only connected via linksets supporting the longer message length (see tables 1 to 3 for an example). Non-enhanced nodes would have no knowledge about the broadband point codes in the MTP network (see table 5 for an example).

The nodes supporting the enhanced links (nodes identified also by the broadband signaling point codes) together with the enhanced linksets would form an overlay network which can transport longer messages than those allowed under MTP level 2 (see figure 3). Nodes having only the enhanced linksets would also be identified by a narrowband and a broadband point code.

The SCCP may also be configured to reach a node having a narrowband and a broadband point code to which no enhanced route is currently available by appropriately engineering the SCCP Global Title (GT) translation data if this should be desired by the operator of the network. GT translation in the SCCP of a node having a narrowband and a broadband point code is engineered so that physical destinations (intermediate translators or final destinations) having a narrowband and a broadband point code have the broadband point code as the primary translation result and the narrowband point code as the backup translation result (see table 4).

As long as two signaling points are connected an enhanced route will be used. If all enhanced routes between two nodes having a narrowband and a broadband point code fail communication between the nodes will be via the linksets supporting only short messages, using the narrowband point codes as addresses. In addition, this solution can also be used for any new MTP users or appropriately modified existing MTP users. Similarly this solution is also suitable for interworking between narrowband and broadband signaling networks.

Although specification citations are given in accordance with C.F.R. 1.192(c), these reference numerals and citations are merely examples of where support may be found in the specification for the terms used in this section of the Brief. There is no intention to suggest in

any way that the terms of the claims are limited to the examples in the specification. As demonstrated by the references numerals and citations below, the claims are fully supported by the specification as required by law. However, it is improper under the law to read limitations from the specification into the claims. Pointing out specification support for the claim terminology as is done here to comply with rule 1.192(c) does not in any way limit the scope of the claims to those examples from which they find support. Nor does this exercise provide a mechanism for circumventing the law precluding reading limitations into the claims from the specification. In short, the references numerals and specification citations are not to be construed as claim limitations or in any way used to limit the scope of the claims.

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Claims 7-8 and 10-11 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over *Christie et al.* (US Patent 5,926,482) in view of *Duree et al.* (US Patent 5,940,393). A copy of *Christie* was previously attached as Appendix "D" and a copy of *Duree* was previously attached as Appendix "E." Copies of these documents have not been attached into the present Supplementary Appeal Brief, as they have been accepted in the original submission for Appeal.

VII. ARGUMENT

A. OBVIOUSNESS UNDER 35 U.S.C. § 103

Whether a claim is obvious is a question of law that is based on underlying factual inquiries including: (1) the scope and content of the prior art; (2) the level of ordinary skill in the art; (3) the differences between the claimed invention and the prior art; and (4) objective evidence of nonobviousness. *In re Zurko*, 59 U.S.P.Q.2d 1693, 1696 (Fed. Cir. 2001).

The Patent Office has the initial burden of proving a *prima facie* case of obviousness. *In re Rijckaert*, 28 U.S.P.Q. 2d 1955, 1956 (Fed. Cir. 1993). In making this determination, the question is not whether the differences between the prior art and the claims themselves would have been obvious, but whether the claimed invention as a whole would have been obvious. *Stratoflex, Inc. v. Aeroquip Corp.*, 218 U.S.P.Q. 871 (Fed. Cir. 1983)(emphasis added). Obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either explicitly or implicitly in the references themselves or in the knowledge generally available to one of ordinary skill in the art. *In re Kotzab*, 55 U.S.P.Q.2d 1313, 1317 (Fed. Cir. 2000).

The initial burden is on the examiner to provide some suggestion of the desirability of doing what the inventor has done. "To support the conclusion that the claimed invention is directed to obvious subject matter, either the references must expressly or impliedly suggest the claimed invention or the examiner must present a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references." *Ex parte Clapp*, 227 USPQ 972, 973 (Bd. Pat. App. & Inter. 1985). When the motivation to combine the teachings of the references is not immediately apparent, it is the duty

of the examiner to explain why the combination of the teachings is proper. *Ex parte Skinner*, 2 USPQ2d 1788 (Bd. Pat. App. & Inter. 1986). (see MPEP 2142).

Further, the Federal Circuit has held that it is “impermissible to use the claimed invention as an instruction manual or ‘template’ to piece together the teachings of the prior art so that the claimed invention is rendered obvious.” *In re Fritch*, 23 U.S.P.Q.2d 1780, 1784 (Fed. Cir. 1992). “One cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention” *In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988).

Moreover, the Federal Circuit has held that “obvious to try” is not the proper standard under 35 U.S.C. §103. *Ex parte Goldgaber*, 41 U.S.P.Q.2d 1172, 1177 (Fed. Cir. 1996). “An-obvious-to-try situation exists when a general disclosure may pique the scientist curiosity, such that further investigation might be done as a result of the disclosure, but the disclosure itself does not contain a sufficient teaching of how to obtain the desired result, or that the claim result would be obtained if certain directions were pursued.” *In re Eli Lilly and Co.*, 14 U.S.P.Q.2d 1741, 1743 (Fed. Cir. 1990).

B. THE REJECTIONS

In the Final Office Action, Claims 7-8 and 10-11 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Christie et al.* (US Patent 5,926,482) in view of *Duree et al.* (US Patent 5,940,393).

Appellants filed Amendments in response to the Final Office Action on February 4, 2005, and provided additional argumentation traversing the rejection.

The Patent Office issued an Advisory Action on April 1, 2005. In the Advisory Action, the Patent Office refused to enter the submitted amendments and repeated the remarks made in the Final Office Action.

C. THE REJECTION OF CLAIMS 7-8 AND 10-11 SHOULD BE REVERSED BECAUSE THE PATENT OFFICE FAILED TO ESTABLISH A PRIMA FACIE CASE OF OBVIOUSNESS

Appellants respectfully disagree with and traverse the rejection of claims 7-8 and 10-11 because the Patent Office has failed to establish a prima facie case of obviousness under §103(a). Specifically, Appellants submit that, alone or in combination, neither the *Christie* nor *Duree* references teach or suggest the elements of the claimed subject matter. Furthermore, there is no teaching, suggestion or motivation to combine references in the manner suggested in the Final Office Action.

1. Neither *Christie* nor *Duree* Teach or Suggest all the Elements Recited in the Claims

The cited art, alone or in combination does not disclose a node in an MTP network for transferring short messages and long messages which are longer than that supported by current MTP level 2 and up to a maximum length supported by SSCOP, wherein the node comprises a first destination point code for connecting to a first link for supporting the short messages (i.e., supported by MTP level 2); and a second destination point code for connecting to a second link for supporting the long messages (i.e., which are longer than that supported by current MTP level 2 and up to a maximum length supported by SSCOP), as recited in claim 7 and similarly recited in claim 10

Christie discloses a system wherein an STP converts and routes signaling messages to avoid re-programming of switches (col. 2, lines 8-18; col. 12, lines 31-35). The conversions are based from the Originating Point Code (OPC) and Destination Point Code (DPC) of the signaling message (col. 7, lines 5-20). The Discriminator 312 analyzes the DPC to determine if the signaling point is the destination point. If not, the message gets directed to Routing 314; if it is the destination, and the message is directed to Distribution 316 for internal processing (col. 7, lines 31-36). Point Code Conversion (PCC) 500 accepts the messages from level 2 and provides messages to Discrimination 312. PCC then translates the signaling message using internal tables to change designated DPC's, OPC's and Circuit Identification Codes (CIC's) (col. 8, lines 24-30). An example of its operation is shown in FIG. 7 and accompanying text (col. 10, line 29-col. 11, line 40).

It is axiomatic from the teaching of *Christie* that the PCC already receives messages from level 2 prior to translating messages (see col. 4, lines 38-43). In contrast, the present application claims the use of long messages that are longer than that supported by current MTP level 2. By definition, the PCC in *Christie* would never receive such long messages according to the disclosure, as they would be unsupported by the level 2 protocol. As a result, the conversion would not take place outside the level 2 processing. In other words, while *Christie* performs conversion of DPC's, OPC's and CIC's, the conversion has nothing to do with the ability of a message to conform to MTP level 2 requirements.

Furthermore, the Office Action dated 10/04/04 (as well as the Advisory Action, top of page 3) asserted that broadband point code identifying functions were disclosed in *Christie* that supported longer message lengths than that supported by MTP level 2 (see office action, bottom of page 5- 1st paragraph page 6), however, nothing in the disclosure of *Christie* shows that this is the case. *Christie* mentions the use of ISUP, however, the mention of ISUP services is no reflection of the level 2 capabilities of the MTP network, and the disclosure shows no support whatsoever for incorporating broadband nodes, such as ATM messaging or B-ISUP.

In this regard, *Duree* was cited as disclosing a system and method for routing calls using ATM multiplexers and gateways, which have their own set protocols (col. 3, line 66 – col. 4, line 24). *Duree* teaches the routing of ATM signals, which also may transport N-ISUP messages that are subsequently encapsulated into ATM cells (col. 12, lines 20-43). However, the transport of N-ISUP messages in *Duree* rely on the same requirements as that in *Christie* – namely, that the N-ISUP messages must comply with the message lengths supported by MTP level 2 prior to transmission (col. 12, lines 29-37; col. 18, lines 52-53). In other words, *Duree* teaches an ATM system that may also pass narrow-band transmissions, however *Duree* does not distinguish between short (supported by MTP(2)) and long (unsupported by MTP(2)) messages, and further does not provide two different destination point codes in response to the type of message (i.e., short or long) being transmitted through a node. Accordingly, neither *Duree* nor *Christie* provide messaging where one destination point code supports short messages, while the second destination point supports long messages in a node.

As claims 8 and 11 depend directly from claims 7 and 10 respectively, it is submitted that these claims are also patentable in light of the arguments provided above.

2. There is no Teaching, Suggestion or Motivation to Combine *Christie* and *Duree* in the Manner Suggested by the Examiner.

Appellants submit that a person of ordinary skill in the art would not be motivated to combine *Christie* with *Duree* where there is no teaching or suggestion in either reference to make such a combination.

The teaching of *Christie* and *Duree* makes it evident that the combination of these references is improper. As discussed above, *Christie* makes no provision for broadband signaling in the disclosure. However, *Duree*, relies exclusively on a broadband architecture (see col. 1, lines 11-45) that is completely different from that in *Christie*. One could not simply substitute the messaging protocols of *Christie* with that of *Duree* without creating an entirely new system. The Examiner notes that *Christie* “does not expressly disclose wherein the second destination point code is used to make full use of the longer and unsegmented message length” (see Final Office Action, page 6, first full paragraph). As this is the case, it would follow that *Christie* would not even *receive* long messages within the system. Nevertheless, the Office Action relies on the encapsulated ATM configuration of *Duree* to conclude that narrowband point codes may be transported across ATM cells. Regardless of the fact that this conclusion belies the teaching in both references, nothing in the Office Action even explains why someone having ordinary skill in the art would even be motivated to attempt such a combination. There is simply no teaching, suggestion or motivation for one skilled in the art to modify the narrowband disclosure in *Christie* using the broadband architecture of *Duree* in the manner suggested by the Examiner.


VIII. CONCLUSION

Appellants respectfully submit that claims 7-8 and 10-11 are not anticipated and non-obvious in view of *Christie* and *Durere* under 35 U.S.C. §103. Accordingly, Appellants respectfully submit that the rejection of pending claims 7-8 and 10-11 is erroneous in law and fact and should be reversed by this Board.

Respectfully submitted,

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BY


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Dated: September 23, 2005

APPENDIX A

**PENDING CLAIMS ON APPEAL OF
U.S. PATENT APPLICATION SERIAL NO. 09/367,580**

Claim 7. (previously presented): A node in an MTP network for transferring short messages and long messages which are longer than that supported by current MTP level 2 and up to a maximum length supported by SSCOP, the node comprising:

a first destination point code, for connecting to a first link for supporting short messages;
and

a second destination point code for connecting to a second link for supporting the long messages,

wherein both the first and second destination point codes are part of the same MTP network.

Claim 8. (previously presented): A node as claimed in claim 7, further comprising MTP routing tables supporting the enhanced links, wherein the routing tables are structured such that routing between nodes with the second destination point code uses only the enhanced links.

Claim 9. (previously presented): A node as claimed in claim 7, further comprising SCCP translation functions supporting the enhanced links, the SCCP translation functions being engineered such that primary translation is to be logical destinations reachable via the enhanced links and backup translation is to be logical destinations reachable via links based on MTP level 2 if translation results in a physical destination located in a node supporting the enhanced links.

Claim 10. (previously presented): A node in an MTP network for transferring short messages and long messages which are longer than that supported by current MTP level 2 and up to a maximum length supported by SSCOP, the node comprising:

a first destination point code for connecting to a first link for supporting short messages;
and

a second destination point code for connecting to a second link for supporting the long messages,

wherein both the first and second point codes are part of different MTP networks.

Claim 11 (previously presented): A node as claimed in claim 10, further comprising MTP routing tables supporting the enhanced links, wherein the routing tables are structured such that routing between nodes with the second destination point code uses only the enhanced links.

Claim 12 (previously presented): A node as claimed in claim 10, further comprising SCCP translation functions supporting the enhanced links, the SCCP translation functions being engineered such that primary translation is to be logical destinations reachable via the enhanced links and backup translation is to be logical destinations reachable via links based on MTP level 2 if translation results in a physical destination located in a node supporting the enhanced links.

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TRANSMITTAL LETTER
(General - Patent Pending)

Docket No.
112740-055

In Re Application No. **Gradischnig**

Application No. 09/367,580	Filing Date August 17, 1999	Examiner Man U. Phan	Customer No. 29177	Group Art Unit 2665	Confirmation No. 4526
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Title: **NODE SUPPORTING LINKS HAVING THE ABILITY TO TRANSFER LONGER MESSAGES THAN ACCORDING TO CURRENT MTP LEVEL 2**

COMMISSIONER FOR PATENTS:

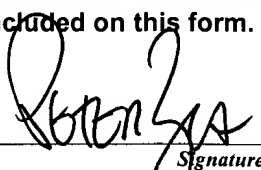
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Transmittal Letter in duplicate; Supplemental Appeal Brief with Appendix on 13 pages in triplicate; and return receipt postcard.

in the above identified application.


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Peter Zura (Reg. No. 48,196)
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Dated: **September 23, 2005**

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